

Item No. 9.	Classification: Open	Date: 11 October 2016	Meeting Name: Planning Committee
Report title:		Article 4 direction to withdraw the permitted development rights granted by Schedule 2, Part 3, Class L (b), of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) covering Bywater Place	
Ward(s) or groups affected:		Surrey Docks	
From:		Director of Planning	

RECOMMENDATIONS

That the Planning Committee:

1. Approves an immediate Article 4 directions (Appendix A) to withdraw the permitted development rights granted by Schedule 2, Part 3, Class L (b), of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) for changes of use from dwelling-houses (Class C3) and Houses of Multiple Occupation (HMOs) (Class C4) covering any property on Bywater Place (Appendix B).
2. Notes the equalities analysis of the proposed Article 4 directions (Appendix C).

BACKGROUND INFORMATION

3. Houses of multiple occupation (HMOs) play an important role in meeting some housing needs. HMOs provide residential accommodation suitable for vulnerable people, such as people in need of support or care and individuals on housing benefit; particularly single people under 35. HMOs also provide housing for individuals such as students, young professionals and individuals with more limited means.
4. An overconcentration of HMOs may result in harmful impacts to amenity within their vicinity. These impacts sometimes include excessive noise, anti-social behaviour, poor refuse management, transport stress and negative impacts on the physical environment and streetscape. A high prevalence of HMOs can affect the character of an area due to the loss of family housing and the resultant demographic impacts. HMOs are also typically associated with a relatively high population churn which may damage social cohesion.
5. Residents of Bywater Place have reported a deterioration of amenity resulting from the growing number of family homes on the estate being used as HMOs. This report sets out how to manage changes of use from family homes to HMOs in Bywater Place where a high prevalence of HMOs is reportedly causing harmful impacts to the amenity and character to a local area.
6. Family homes and HMOs are different land uses under the Use Class Order. The different planning categories which apply to family homes and HMOs are set out below.

Type of home	Planning use class
Family homes	C3
HMO for between three and six people	C4
HMO for more than six people	Sui generis

7. A planning application is not required to change use between a family home (C3 use) and a smaller HMO (C4 use) as the change is permitted under the General Permitted Development Order (GPDO). Change of use from C3 or C4 to a larger HMO (sui generis) is not permitted under the GPDO and a full planning application must be granted by the local planning authority prior to the lawful change of use.
8. A local planning authority may introduce an Article 4 direction to remove permitted development rights where the impact of development brought forward under provisions in the GPDO cause harm. An Article 4 direction removing permitted development for changes of use between C3 and C4 means that changes between these uses will only be lawful after planning permission has been granted by the local planning authority. Article 4 directions do not mean the change of use will be unacceptable in all cases and the planning authority must assess the merits of each individual application in accordance with local plan policies and other material considerations.
9. The council introduced an Article 4 direction removing permitted development rights to change use between C3 and C4 uses to properties on Henshaw Street in 2014. This was introduced to manage impacts resulting from changes of use from C3 to C4 due to the already high concentration of HMOs on the street. Residents of Bywater Place have reported a deterioration of local amenity resulting from a growing proportion of homes being converted to C4 use on the street. However, in the absence of a further Article 4 direction the council currently has no powers to manage changes of use between C3 and C4 uses on Bywater Place.

HMOs on Bywater Place

10. Bywater Place is a housing estate towards the north-eastern tip of the Rotherhithe peninsula (see Appendix 1). The housing mix includes a range of flats, terraces, semi-detached and detached housing with a 1980s London Docklands Development Corporation architectural style (see Appendix 2). The streets immediately to the north (Admiral Place and Heron Place) are of a similar architectural style and may be part of the same development. Residents of Bywater Place have approached the council to express their concern that the character of the street and residential amenity is being adversely affected by the high proportion of properties being converted to HMOs, some of which have been extended prior to the change of use¹. A number of HMOs on Bywater Place and across the Rotherhithe peninsula are managed by Ultimate Housing. Ultimate Housing provides flexible HMO tenancies aimed at young professionals new to London and who typically work in Canary Wharf and the City of London.
11. Some Bywater Place residents perceive that the growing use of family homes as HMOs is changing the character of the area and causing harm to residential amenity. This is primarily a consequence of greater pedestrian and vehicular movements leading to an increase in noise and the generation of more household waste. It has also been reported the properties in use of HMOs have poorly maintained amenity

¹ The Council previously granted planning permission for an extension and conversion of a garage to residential use on Bywater Place and attempted to impose a planning condition to restrict its use as part of an HMO. A planning inspector stated the Council could not require the developer to submit to this condition

space which adversely affects visual amenity. The suburban character of the area is particularly suitable for families with children and the widespread loss of family homes has altered the demographic mix in the area.

12. There are 90 properties on Bywater Place and 14 (15.6%) are known to be in use as HMOs by the council. Information provided by the estate's management company indicates that a further four homes are probably being used as HMOs. Twenty three homes are privately rented and there is a possibility they are being used as HMOs. The remaining 49 properties are recorded as being owner-occupied. The following table shows the estimated prevalence of HMOs on Bywater Place. This shows 20% to 45% of properties on the street may be in use as HMOs.

Property status	Number	Percentage
Unlikely to be an HMO	49	54.4%
Possibly an HMO	23	25.6%
Probably an HMO	4	4.4%
Identified HMO	14	15.6%
Total	90	

Article 4 directions

13. An Article 4 direction can be used to remove specific permitted development rights in all or parts of the local authority's area. It would not restrict development altogether, but instead ensure that development requires planning permission. A planning application would need to be submitted that would then be determined in accordance with the development plan. Article 4 directions must apply to all uses within the relevant use class and it cannot restrict changes within the same use class.
14. The government's on-line national planning practice guidance (NPPG titled 'When is permission required?') sets out guidance on the use of Article 4 directions. The NPPG states that an Article 4 direction to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. It also states that in deciding whether an Article 4 direction would be appropriate, local planning authorities should identify clearly the potential harm that the direction is intended to address (paragraph 38).
15. Article 4 directions can either be immediate or non-immediate depending upon when notice is given of the date on which they come into force. Immediate directions can be made where the development presents an immediate threat to local amenity or prejudices the proper planning of an area (NPPG paragraph 45). In the case of this report, the council is proposing to make an immediate Article 4 direction for which the process is as follows:
- Stage 1 (the current stage): The council makes an Article 4 direction withdrawing permitted development rights with immediate effect
 - Stage 2: Publication/consultation stage - the council:
 - 1) publishes the notice of direction in a local newspaper

- 2) formally consults with general members of the public and the owners and occupiers of every part of the land within the area or site to which the direction relates over a period of 21 days
 - 3) and place notices up on site for not less than 6 weeks.
- Stage 3: On the same day that notice is given under stage 2 above, the council refers its decision to the Secretary of State who has powers to modify or cancel a direction
 - Stage 4: Confirmation stage - the direction comes into force on the date on which the notice is served on the owners/occupiers of the land. The council has between 28 days from the date of when the notice comes into effect and 6 months to decide whether to go ahead and confirm the direction, taking into account any representations which have been received. If confirmation this does not happen within 6 months, the direction will lapse.

Compensation

16. In some circumstances the council can be liable to compensate developers or landowners whose developments are affected by Article 4 directions. Local planning authorities are liable to pay compensation to landowners who would have been able to develop under the permitted development rights that an Article 4 direction withdraws, if they:
 - Refuse planning permission for development which would have been permitted development if it were not for an Article 4 direction or
 - Grant planning permission subject to more limiting conditions than the GPDO would normally allow, as a result of an Article 4 direction being in place.
17. Compensation may also be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. 'Abortive expenditure' includes works carried out under the permitted development rights before they were removed, as well as the preparation of plans for the purposes of any work.
18. Loss or damage directly attributable to the withdrawal of permitted development rights would include the depreciation in the value of land or a building(s), when its value with the permitted development right is compared to its value without the right.
19. However, the compensation arrangements differ for cases where a development order in respect of prescribed development is being withdrawn. The definition of prescribed development can be found in regulation 2 of the Town and Country Planning (Compensation) (England) Regulations 2015 (as amended). In cases such as these compensation is not payable if the following procedure is followed, as set out in section 108 of the Town and Country Planning Act:
 - The planning permission withdrawn is of a prescribed description as set out in the Town and Country Planning (Compensation) Regulations 2015 (as amended)
 - The permitted development right is withdrawn in the prescribed manner
 - Notice of withdrawal is given in the prescribed manner:

- Not less than 12 months before it takes effect
 - Not more than the prescribed period of two years.
20. Permitted development rights granted by Schedule 2, Part 3, Class L (b) is prescribed development, which means that compensation will only be payable for 12 months from the date that the immediate direction comes into force.

Planning applications

21. If permitted development rights are withdrawn and planning permission is required, the council would be obliged to determine the proposal in accordance with the development plan unless material considerations indicate otherwise. In Southwark's case, the development plan includes the London Plan, the Core Strategy, saved policies in the Southwark Plan and adopted area action plans. The relevant saved policies relating to change of use in the Southwark Plan is policy 4.7 (Non self-contained housing for identified user groups), which seeks to regulate new HMOs to ensure the use does not result in a significant loss to amenity to neighbouring occupiers and to ensure there is adequate infrastructure in the area to support the increase in residents. Furthermore, the policy seeks to ensure such development makes suitable provisions for adequate amenities and facilities to support the specific needs of the occupiers, including servicing and management arrangements. Southwark Plan policy 4.3 (Mix of dwellings) prevents subdivision of larger family homes into two or more units. However, this policy does not apply to the conversion of family homes into HMOs, although the effect of such conversions is similar in terms of loss of family housing stock and the intensification of use. As such, there is a strong policy basis against which to assess applications for change of use from C3 to C4.
22. The main reasons for making the Article 4 directions are to protect residential amenity and the quality of residential accommodation. The relevant policies that would therefore apply would be saved Southwark Plan policies 3.2 (protection of amenity) policy 3.12 (quality in design), policy 4.2 (quality of residential accommodation). The council's Residential Design Standards SPD (2015) also contains guidance relating to the quality of residential accommodation which would be applicable in the determination of planning applications for changes of use which included any additional floor-space or reconfiguration of the home.
23. It should be noted that where submission of a planning application is required as a result of withdrawal of permitted development rights through an Article 4 direction, the council cannot charge a planning application fee.

KEY ISSUES FOR CONSIDERATION

24. As is noted above, the NPPF advises that the use of Article 4 directions to remove national permitted development rights should be limited to situations where it is necessary to protect local amenity or the wellbeing of the area. This is reiterated in the NPPG which also states local planning authorities should identify clearly the potential harm that the direction is intended to address and that immediate directions can be made where the development presents an immediate threat to local amenity or prejudices the proper planning of an area.
25. The use of a dwelling-house (C3) as an HMO (C4) is an intensification of use because single households generate less waste and movements per person than multiple

households. The outer area of the Rotherhithe peninsula is suburban in character with relatively poor public transport accessibility and a relatively high prevalence of family homes. New proposals for change of use from dwelling-houses (C3) to HMOs (C4) on Bywater Place would require planning permission following the introduction of an Article 4 direction. The introduction of an Article 4 direction covering Bywater Place would be justified to preserve the character of the area and to ensure development is managed sustainably as it would enable the council to ensure there are adequate waste management and parking facilities to cope with the intensification of use. It would also enable the council to preserve the character of an area by protecting existing family housing.

26. For these reasons and the detailed considerations outlined below, it is considered that all proposals for changes of use from dwelling-houses (C3) to HMOs (C4) on Bywater Place should be subject to a planning application where a thorough assessment can be given to the merits of the proposal.

Conclusions

27. An Article 4 direction can be made if the council is satisfied it is expedient that development should not be carried out unless planning permission is granted on application and that in the case of immediate directions, development presents an immediate threat to local amenity or prejudices the proper planning of an area. The council is aware of recent interest in converting dwelling-houses to HMOs on Bywater Place and immediate Article 4 direction is considered appropriate in this instance.
28. The use of an Article 4 direction would not restrict development altogether, but instead ensure that development requires planning permission. It is recognised that converting dwelling-houses to HMOs can provide housing which meets some household's housing needs. However there are a number of concerns relating to the proliferation of HMOs in areas which currently have a high concentration.
29. The council is satisfied that permitted development rights granted by Schedule 2, Part 3, Class L (b), of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) prejudice the proper planning of Bywater Place and presents an immediate threat to the residential amenity of current and future occupiers of the street.

Consultation

30. Consultation on the Article 4 directions will comply with provisions set out in the GPDO. Notice of the directions will be made by:
 - Local advertisement in the press
 - Site notices placed in visible locations on Bywater Place, including at the entrance and at each junction for a period of at least 6 weeks
 - Written notification sent to every owner/occupier of properties on Bywater Place specifying a period of at least 21 days in which representations can be made.
31. Following consultation and within 6 months, a report recommending whether the direction should be confirmed will be reported back to planning committee.

Community impact statement

32. Southwark Council is striving to deliver quality homes of every kind to meet the needs of a diverse range of households and families within the borough. The council is working hard to deliver new housing with a strong commitment to the delivery of new affordable homes. The demand for housing in Southwark and across London is extremely high, and it is vital that a strong policy framework ensures new housing maintains a high quality of design of residential accommodation and protects the amenity of residents. The Article 4 direction seeks to manage changes of use from dwelling houses to HMOs in a street which has been identified as having a high prevalence of HMOs and is part of a longer term strategy to provide good quality residential accommodation in the borough.
33. The equalities analysis (Appendix C) has concluded that the Article 4 directions will have a neutral impact on equalities and they will assist the council in implementing its planning policy framework, which has also undergone equalities analysis.

Financial implications

34. The introduction of an Article 4 direction necessitates the submission of a planning application to lawfully undertake development that is prescribed in the GPDO. Any application submitted for reason of the direction must be processed by the council for no fee. Considering the limited number of properties affected by the proposed Article 4 direction this cost is likely to be minimal.
35. As is noted above, should the local authority refuse planning permission for development that otherwise would have been granted by Schedule 2, Part 3, Class L (b), the council's potential liability for compensation is limited to one year from the date the direction is introduced. Any compensation may relate either to a depreciation in the value of land or buildings which results from failure to gain planning permission or to abortive expenditure. Therefore there is a risk that the proposed directions will make the council liable to compensation claims. Because circumstances vary widely, it is not possible to gauge the magnitude of such claims. However, the magnitude of the claim owing to any depreciation in value of land or buildings is assessed by valuing the land or buildings in their current use and the use that would have been permitted development in the absence of an Article 4 direction. It is unlikely that a valuation of a home in use as a C3 dwelling-house and as a C4 HMO would result in any significant divergence.
36. Any claim for compensation will be dealt with through the council's official complaints procedure and it is anticipated that any award would be contained within the Planning division's budget. This position will be monitored and any award that cannot be contained within existing departmental revenue budgets will be reflected in the council's revenue budget monitoring arrangements for funding from council reserves.
37. Any potential drawdown from council reserves for the payment of compensation claims will be subject to agreement by the relevant cabinet member, or full cabinet in the case of claims over £50,000.
38. Staffing and any other costs connected with this recommendation will be contained within existing departmental revenue budgets.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

39. Planning committee is being asked to approve the making of an immediate Article 4 directions which relates to “prescribed development” as defined by regulation 2 of the Town and Country Planning (Compensation) (England) Regulations 2015 (as amended).
40. Part 3F of the council’s constitution, titled ‘Matters reserved for decision by the planning committee’ at paragraph 3 reserves to planning committee any authorisations under Article 4 of the Town and Country Planning Permitted Development Order. This, therefore, confirms that planning committee has authority to take the decisions being asked of it.
41. In regard to compensation matters, section 108 of the Town and Country Planning Act 1990 (as amended) specifies the circumstances under which compensation is payable for the refusal or a conditional grant of planning permission which was formerly granted by a development order or a local development order.
42. Section 107 of the 1990 Act which sets out the entitlement to compensation where planning permission has been revoked and modified is of relevance here as section 108 of the 1990 Act extends the entitlement for compensation under section 107 to circumstances where planning permission granted by a development order has been withdrawn by an Article 4 direction.
43. In regard to the immediate Article 4 directions withdrawing rights granted under Schedule 2, Part 3, Class L (b) is a ‘prescribed description’ development and because it is an immediate direction (the council is not giving more than 12 months notice of the making of the direction) then the council will need to pay compensation for claims made within 12 months of the date of the direction.
44. The value of the claim for compensation would differ in each individual case but in the event that claims are between £5,000 and £50,000 then they would be sanctioned by the relevant cabinet member under part 3D paragraph 5 of the constitution. Any compensation claims over that amount would require the approval of full cabinet.

Human rights and equalities

45. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights (ECHR). Various convention rights may be engaged in the process of making and considering these Article 4 directions, including under Article 1 of the First Protocol (Protection of property) and Article 8 (Right to respect for a private and family life). The European Court has recognised that ‘regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole’. Both public and private interests are to be taken into account in the exercise of the council’s powers and duties as a local planning authority. Any interference with a convention right must be necessary and proportionate.
46. The council has carefully considered the balance to be struck between individual rights and the wider public interest. The rights of those affected by the proposed Article 4

directions have been considered under the Human Rights Act 1998 and it has been determined that none of the articles will be triggered.

47. In consulting upon the introduction of the Article 4 directions the council has had regard to its public sector equality duty (PSED) under s.149 of the Equality Act 2010.
48. The PSED is only one factor that needs to be considered when making a decision and may be balanced against other relevant factors. The council also took into account other relevant factors in respect of the decision, including financial resources and policy considerations. In appropriate cases, such countervailing factors may justify decisions which have an adverse impact on protected groups.
49. The council has given consideration to all the protected characteristics in the Equality Act 2010 to ensure that any potential impacts of the proposed immediate Article 4 directions and the non-immediate direction on these groups of people have been considered and where possible mitigated (Appendix C).

Strategic Director of Finance and Governance

50. This report is requesting planning committee to approve an immediate Article 4 directions (Appendix A) to withdraw the permitted development rights as part of the regulation 2 of the Town and Country Planning (Compensation) (England) Regulations 2015 (as amended), as detailed in the recommendations. Full details and background are contained within the main body of the report.
51. The strategic director of finance and governance notes that there is a risk that the proposed Article 4 directions may lead to potential compensation claims. It is noted that although it is not possible to gauge the magnitude of such claims but this is not considered to be significant as reflected in the financial implications. Any claim for compensation will be dealt through the council's official complaints procedure and sanctioned by the relevant cabinet member under the council's constitution as reflected in the report.
52. It is also noted that any agreed claims for compensation would be contained within the existing departmental revenue budgets where possible before funding from councils reserves are requested.
53. Staffing and any other costs connected with this recommendation to be contained within existing departmental revenue budgets.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Saved Southwark Plan 2007	http://www.southwark.gov.uk/info/856/planning_policy/1241/the_southwark_plan	planningpolicy@southwark.gov.uk
The Core Strategy 2011	http://www.southwark.gov.uk/info/200210/core_strategy	planningpolicy@southwark.gov.uk
Residential Standards SPD 2015	http://www.southwark.gov.uk/downloads/download/2257/residential_design_standards_spd	planningpolicy@southwark.gov.uk
General Permitted Development Order 2015	http://www.legislation.gov.uk/ukxi/2015/596/pdfs/ukxi_20150596_en.pdf	planningpolicy@southwark.gov.uk

APPENDICES

No.	Title
Appendix A	Draft Article 4 direction to withdraw the permitted development rights granted by Schedule 2, Part 3, Class L (b), of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)
Appendix B	Maps area subject to proposed Article 4 direction
Appendix C	Equalities analysis

AUDIT TRAIL

Lead Officer	Simon Bevan, Director of Planning	
Report Author	Philip Waters, Planning Policy Team Leader	
Version	Final	
Dated	29 September 2016	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	Yes	No
Date final report sent to Constitutional Team	29 September 2016	